(4)

No. 90-206

Supreme Court, U.S.
FILED
NOV 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LINDA BACKIEL,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Patricia V. Pierce, Esquire
125 South 9th Street, Suite 505
Philadelphia, PA 19107-5118

Morton Stavis, Esquire*
Arthur Kinoy, Esquire
Center for Constitutional Rights
666 Broadway
New York, NY 10012
(212) 614-6464

Leonard Weinglass, Esquire
6 West 20th Street
New York, NY 10011
(212) 807-8646

* *Counsel of Record*

Attorneys for Petitioner

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Pursuant to this Court's Rule 15.6, petitioner Linda Backiel replies to the arguments first raised in the Government's Brief in Opposition (hereinafter "Opp."):

1. The Five Day Notice Rule (Question 1): By pointing out that "no court has held that the five-day notice period" of either Fed. R. Crim. P. 45(d) or Fed. R. Civ. P. 6(d) "applies rigidly" to grand jury proceedings, Opp. 6, the respondent suggests this Court abdicate its supervisory responsibility over lower federal courts and promote continuing uncertainty and inconsistency with regard to this simple but basic question. As outlined more fully in petitioner's brief, the issue of what notice is due a civil contemnor is one which has deeply divided the lower courts, generated inconsistent opinions within the Third Circuit, and resulted in hearings which are completely bereft of basic due process safeguards. See Petition 11-14. The current uncertainty serves no legitimate purpose and undermines the dignity and credibility of the judicial process. The government offers no persuasive reason to deny certiorari on this question.

2. Scope of the Hearing on Remand (Question 2): As was the case with Question 1, respondent offers no real reason to deny the writ on this question but instead asks this Court to sidestep an issue of constitutional dimension by suggesting that petitioner's due process claims need not be reviewed because the district court has not been foreclosed from "reconsidering any issue if petitioner could persuade" it to ignore the Circuit's decision. Opp. 5. Having condemned the practice of secret hearings in a contempt context, the Circuit's restriction of the scope of the contempt hearing to be accorded petitioner was

clearly improper and should be addressed by this Court. Respondent's argument to the contrary openly encourages a policy of judicial anarchy.

Additionally, it is ludicrous to suggest as respondent does that incorporating the record of a secret hearing into the record of a subsequent "public" hearing satisfies the need for a public hearing. Opp. 7. The after-the-fact opportunity to read a written record cannot substitute for the right of the press and the public to witness events as they occur. Nor can such after-the-fact reading provide petitioner or any other litigant with the essential safeguards secured by an open and public proceeding. Such a procedure is neither fair nor lawful.

In short, no reason for denying the writ in Question 2 has been offered, and the petition should be granted.

3. Testimonial Subpoena to a Lawyer (Question 3): Respondent's final point asserts that grand jury subpoenas to attorneys should be enforced whenever the minimal showings of relevance can be made so long as the district court fails to find they were "not sought primarily for another purpose." Opp. 8. The additional First Amendment interests present in this case aside, to permit such broad use of grand jury subpoenas to attorneys for targets of the investigation not only violates the Department of Justice guidelines on this precise topic, but also wreaks havoc with an adversarial system of justice. Petition 24-25.

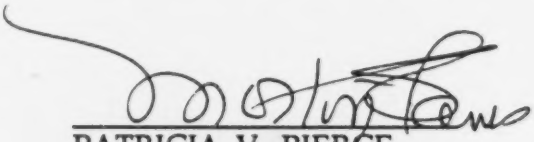
Contrary to respondent's assertions, petitioner is not advocating the creation of a new privilege but is requesting this Court recognize that a heightened scrutiny is essential and requires the enunciation of uniform standards. Respondent's brief offers no valid opposition to this much needed guidance and consequently the Petition should be granted.

CONCLUSION

For the above reasons, as well as for those stated in the Petition, certiorari should be granted.

Dated: November 7, 1990.

Respectfully submitted,



PATRICIA V. PIERCE
MORTON STAVIS
ARTHUR KINOY
LEONARD WEINGLASS
Attorneys for Petitioner